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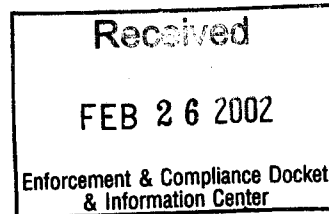
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To: "docket.oeca@epa.gov" <docket.oeca@epamail.epa.gov>
cc: Dave Darling <ddarling@paint.org>
Subject: EC-2000-007

EC-2000-007
1U-D-059

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U.S. Environmental Protection Agency
Enforcement and Compliance Docket
and Information Center (2201A)
Attention Docket #EC-2000-007
1200 Pennsylvania Ave., NW
Washington, DC 20460



RE: Establishment of Electronic Reporting: Electronic
Records; Proposed Rule

The National Paint and Coatings Association (NPCA) is submitting comments concerning the Environmental Protection Agency's (hereinafter referred to as EPA or the Agency) Establishment of Electronic Reporting: Electronic Records; Proposed Rule (hereinafter referred to as the "Proposed Rule"). NPCA appreciates the opportunity to comment on this important rulemaking and hopes our comments will assist the EPA in their final determination.

NPCA is a voluntary, nonprofit trade association representing some 400 manufacturers of paints, coatings, adhesives, sealants, and caulks, raw materials suppliers to the industry, and product distributors. As the preeminent organization representing the coatings industry in the United States, NPCA's primary role is to serve as ally and advocate on legislative, regulatory and judicial issues at the federal, state, and local levels. In addition, NPCA provides members with such services as research and technical information, statistical management information, legal guidance, and community service project support.

EPA and the States heavily regulate the paint and coatings industry. Members routinely record and report to EPA or the appropriate State authority under numerous environmental regulations, including the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, Superfund, the Toxic Release Inventory, and the Toxic Substances Control Act. In addition, NPCA members must comply with a myriad of recording and reporting requirements for other agencies such as the Department of Transportation and the Occupational Safety and Health Administration. Therefore, changes to federal regulations regarding record retention and reporting are of great interest to the paint and coatings industry and any options that provide for greater efficiency and cost savings regarding these regulations are generally well received.

In this respect, NPCA supports allowing electronic reporting by regulated entities to EPA and allowing regulated entities to keep EPA-mandated records electronically, however, the Proposed Rule, commonly referred to as CROMERRR (Cross-Media Electronic Reporting and Recordkeeping Rule), as written, does not effectively satisfy this goal. In fact, the Proposed Rule actually serves as a disincentive to the regulated community and may, as outlined herein, impose costly and stringent burdens upon industry. In light of the significant problems in the Proposed Rule, NPCA recommends that EPA discard the current proposal and offered a new proposal addressing the following issues.

CROMERRR's basic premises are fatally flawed. EPA assumes that electronic recordkeeping is not widespread and commonly occurring, when electronic data generation, retention, and manipulation are standard practices. In fact, records are almost always created, maintained, or at the very least, manipulated electronically at some point during the process of generating agency-mandated records. In addition, EPA assumes the Proposed Rule will have little cost associated impacts to facilities, again, assuming that electronic recordkeeping and the associated systems do not exist in high quantities. On the contrary, one facility alone will use a variety of systems to track, record and report regulatory data. All records will pass through one or more systems at some point in their lifetimes, even if the final report is hand written. Furthermore, larger companies with multiple facilities will use various systems throughout their facilities and corporate headquarters. Therefore, the costs and burden associated with retrofitting or replacing these systems in light of the Proposed Rule's recordkeeping requirements would in reality be astronomical.

This is further compounded by CROMERRR's seemingly mandatory stance. The clear intent of the Proposed Rule is to make electronic recordkeeping and reporting voluntary upon regulated entities as well as regulators implementing EPA authorized programs. In numerous places throughout the preamble to the rule, EPA reiterates the supposed voluntary nature of this rulemaking. For example (emphasis added):

"These proposed requirements will apply to regulated entities that choose to submit electronic documents and/or keep electronic records, and under today's proposal, the choice of using electronic rather than paper for future reports and records will remain purely voluntary."

"Submission of reports in an electronic format will be voluntary."

"Today's rule is not subject to the RFA [Regulatory Flexibility Act] because electronic reporting and recordkeeping is voluntary and will only apply ... to regulated entities that seek to maintain records or transmit compliance reports electronically..."

Despite these assertions, however, other language in CROMERRR, and most importantly, proposed for codification, would make the rule de facto mandatory. This result turns on EPA's definition of "electronic record" and "electronic record-retention system." Again, emphasis is added:

"Electronic record means any combination of text, graphics, data, audio, pictorial, or other information represented in digital form that is created, modified, maintained, archived, retrieved or distributed by a computer system."

"Electronic record-retention system means any set of apparatus, procedures, software, records or documentation used to retain exact electronic copies of electronic records and electronic documents."

These definitions are so broad that they literally encompass any and all records that are ever generated, manipulated or stored using electronic devices during any point in their lifetime, if that data is going to be used for compliance with EPA regulations, regardless of what format the final regulatory report is in. In defining these terms in this way, EPA effectively requires the Proposed Rule's stringent and costly recordkeeping regulations be administered to all regulated entities' records irrespective of whether they choose to submit reports electronically to the Agency.

This is unacceptable.

Based on the erroneous assumptions EPA has made concerning the actual use of electronic systems to produce and store electronic records and the amount of various systems and electronic practices currently in use, coupled with the technically flawed language used by EPA that effectively mandates this rulemaking upon regulated industries as well as authorized regulators, EPA must eliminate the currently proposed rule and re-propose an alternative. While various scenarios have been offered to "fix" the Proposed Rule in a final rulemaking, including addressing the issues above or decoupling the recordkeeping provisions from the reporting requirements, NPCA believes that these solutions are inadequate to address this rulemaking. In order to ensure a sound and warranted rulemaking, the currently Proposed Rule must be withdrawn and a new proposal submitted for review and comment.

Even if the Proposed Rule did not de facto mandate the costly and burdensome recordkeeping provisions, the rest of the rule is in itself so technically complex and would impose such elaborate requirements on any reporting entities that NPCA does not believe industry or States would ever voluntarily register under the program. This, in turn, subverts the whole purpose of the rule, which is to achieve paperwork reduction under EPA programs.

The Proposed Rule's economic analysis declares that the cost of complying with EPA's recordkeeping provisions would be about \$40,000 per facility. NPCA believes this to be a substantial underestimate of the true costs this rule would impose if it were to be finalized as written. If CROMERRR was in fact voluntary, and if a facility choose to implement electronic reporting as proposed, it would cost that facility much more than \$40,000 to update and purchase the new equipment, software, and systems necessary to comply with CROMERRR's incredibly detailed and overly ambitious provisions for record validation and reliability. Virtually none of the systems currently in place and commonly used to compile, track and record regulatory-mandated information comply with the stringency EPA deems necessary in the Proposed Rule to implement electronic reporting. If CROMERRR is mandatory, as currently written, the rule's cost would be exorbitant as the requirements would be imposed on all EPA reporting entities.

The Proposed Rule mandates extensive anti-fraud requirements and sophisticated retention systems that are unnecessary. Specifically, EPA suggests that in order to take advantage of electronic recordkeeping and reporting, the regulated community would have to generate and maintain accurate and complete electronic records in a form that may not be altered without detection (emphasis added). In addition, EPA proposes that records can not be altered throughout the records' retention period; produce accurate and complete copies of electronic records and render these readily available in electronic form throughout the entire retention period; use secure, computer generated, time-stamped audit trails to automatically record actions that create, modify, or delete electronic records; ensure that records are searchable and retrievable for secondary uses, including inspections and third party disclosures throughout the retention period; and archive electronic records in an electronic form that preserves the context, metadata, and audit trail (emphasis added). NPCA believes that the stringency of these criteria is unwarranted and would act as a major deterrent to our members choosing to submit electronic reports to EPA.

NPCA recognizes and supports accurate and verifiable record retention policies as well as requirements ensuring the legitimacy of those records.

However, EPA's criteria for recordkeeping under the Proposed Rule are unduly burdensome. While NPCA appreciates EPA's concern over fraudulent activities, there must be a balance between the benefits of electronic reporting and the risks of fraud. Electronic reporting and recordkeeping requirements should be based on existing standard practices in the electronic commerce industry. As proposed, CROMERRR focuses too much on validation and verification, essentially destroying the rule's goal of increased efficiency and paperwork reduction. Current EPA statutes as well as other Federal and State laws prohibit and adequately address the fraudulent submission of reports to the Agency; CROMERRR does not need to readdress those issues. By doing so, CROMERRR makes it cost-prohibitive to choose electronic reporting and recordkeeping as an option.

For example, facilities even thinking about submitting electronic reports to the Agency would need to do a full assessment of existing systems in order to determine compliance with the Proposed Rule's criteria. This would need to be done not only at the facility and corporate levels but at the contractor level as well since many companies outsource various aspects of their regulatory compliance. This initial assessment could cost \$40,000 alone depending on the size of the company. Next, the facilities would have to upgrade systems in order to ensure compliance once reports are electronically submitted. Again, this is a major capital investment for hardware and software, not to mention the training related to new systems and the likely addition of new personnel to run and maintain such.

Over and above the costs associated with EPA's anti-fraud provisions in the Proposed Rule, the technical requirements of such are also compliance-prohibitive. Specifically, the long-term preservation and retention of electronic records is a challenge because software products change frequently. Maintaining legacy systems or transitioning the data accurately across multiple generations of computer systems and software is very difficult. This is compounded by the length of time many of these records are required to be kept (in some cases, for the life of the facility). In addition, many commonly used computer programs lack the audit trail, access, and searchable criteria that EPA would mandate. In fact, it may be impossible to find systems that comply with CROMERRR and still do the tasks the facility requires of them. Because of these technical difficulties and the cost associated with overcoming such, electronic reporting under EPA's current scheme would not be a viable option for our industry.

CROMERRR is EPA's response to the Government Paperwork Elimination Act (GPEA). The GPEA directs the Office of Management and Budget (OMB) to issue guidance to Agencies on its implementation. One of those implementation tools is a risk assessment and cost benefit analysis of proposals under the GPEA. EPA apparently did not follow this OMB guidance and provided no risk assessment or cost benefit analysis with regard to CROMERRR. NPCA believes that if EPA had done the requisite analysis, it would have found insufficient justification for the stringent and expensive provisions now included in CROMERRR, and that flexible record retention provisions could have been offered while still providing essential anti-fraud protection. Without adequate analysis in this regard the regulated community is left with an oppressive regulation that, if in fact voluntary, will not be taken advantage of, thereby frustrating the purpose of the rule and the goals of the GPEA.

Again, NPCA feels that CROMERRR, as proposed, is fatally flawed. In practice it is not a voluntary regulation and would imposed expensive and

unwarranted regulations upon virtually all of industry. Furthermore, even if EPA were to correct the Proposed Rule to provide for purely voluntary compliance, the burdensome recordkeeping requirements would essentially nullify electronic record options for industry. In short, the problems with the Proposed Rule cannot be corrected in a final rulemaking - the Proposed Rule must be withdrawn and a new rule, accompanied by a cost benefit analysis, must be offered through re-proposal.

Respectfully Submitted,

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(Comments submitted via e-mail and regular mail)